BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY VAN GORDEN	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 199,461 & 199,462
IBP, INC.	)	
Respondent,	)	
Self-Insured	)	

ORDER

Both parties appealed the Award dated December 17, 1998, and the Award Nunc Pro Tunc dated December 18, 1998, entered by Administrative Law Judge Brad E. Avery. After Board Member Gary M. Korte recused himself from this proceeding, the Director appointed Stacy Parkinson of Olathe, Kansas, to serve as Board Member Pro Tem. The Appeals Board heard oral argument on July 7, 1999.

APPEARANCES

John J. Bryan of Topeka, Kansas, appeared for the claimant. Jennifer L. Hoelker of Dakota City, Nebraska, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award and in the Award Nunc Pro Tunc. Pursuant to the parties' agreement at the regular hearing, the record also includes the wage information attached to respondent's submission letter.

ISSUES

Docket #199,461 is a claim for a January 14, 1995 accident allegedly resulting in injuries to the right shoulder, right arm, upper back, and neck. Docket #199,462 is a claim for a series of repetitive mini-traumas and accidents beginning January 14, 1995, and continuing through October 24, 1995, which allegedly resulted in injuries to both shoulders, both arms, and the neck.

Judge Avery found that claimant sustained permanent injury to her right shoulder on January 14, 1995, and afterwards permanently aggravated her left shoulder and neck

as the direct and natural result of the right shoulder injury. Finding a 50 percent task loss and imputing a post-injury wage that produced a 41 percent wage loss, the Judge awarded claimant a 45.5 percent permanent partial general disability. The Judge computed claimant's pre-injury average weekly wage as if she were a part-time worker and found it to be $293.42. Further, the Judge ordered the respondent to pay for claimant to obtain specially designed brassieres. Both parties appealed.

Claimant contends the Judge erred by (1) computing claimant's pre-injury average weekly wage as if she were a part-time rather than full-time worker, (2) failing to include additional compensation items in the average weekly wage computation, (3) failing to issue a separate award for the January 1995 accident apart from the alleged repetitive use injury that ended the last day of work on October 24, 1995, (4) failing to find that claimant was permanently and totally disabled, and, (5) in the alternative, failing to find that claimant had a 100 percent task loss when determining claimant's permanent partial general disability.

In claimant's brief to the Appeals Board, she argues that in Docket #199,461 she should be awarded a 50.5 percent permanent partial disability to the right arm and shoulder for the January 14, 1995 accident and in Docket #199,462 either a permanent total disability or a 100 percent permanent partial general disability.

Conversely, the respondent contends the Judge erred by (1) finding that claimant aggravated or injured her left shoulder and neck as a natural and direct consequence of the January 1995 accident, (2) considering Dr. Zita J. Surprenant's report and opinion that the left shoulder and neck injuries were the natural and direct consequence of the January 1995 accident, (3) failing to issue separate awards for functional impairment in each of the docketed claims, (4) failing to deduct an amount for preexisting impairment, and (5) finding that respondent should pay for providing claimant with a specially designed brassiere.

In its brief to the Appeals Board, the respondent argued that in Docket #199,461 claimant should receive a 21 percent permanent partial disability for the January 1995 injury to the right shoulder and in Docket #199,462 a 10.4 percent permanent partial general disability based upon the whole body functional impairment rating. In its November 20, 1998 submission letter to Judge Avery, the respondent argues that the average weekly wage is $293.42 for the first accident and $227 for the second accident.

The issues now before the Appeals Board in both docketed claims are:

1. What is the date, or dates, of accident?

2. What is the appropriate average weekly wage for each accident?

3. What is the nature and extent of injury and disability?

4. Should the permanent partial disability rating, or ratings, be reduced for preexisting impairment?

5. Should the respondent be required to provide claimant with a special brassiere?

6. Should Dr. Surprenant's medical report, which was requested by the administrative law judge, be considered as part of the evidentiary record?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. Shirley Van Gorden began working for IBP, Inc., in July 1970. Ms. Van Gorden's first job was cutting meat but after about 11 months she transferred to sealing meat in bags. After doing that job for about 10 years, she transferred to sorting meat. In the mid- to late 1970s, Ms. Van Gorden began experiencing shoulder problems. The symptoms gradually worsened.

2. In the late 1980s, Ms. Van Gorden transferred to the laundry because that job was physically easier than working on the floor. But despite the transfer, Ms. Van Gorden's right shoulder symptoms continued.

3. Once Ms. Van Gorden began working in the laundry, IBP permitted her to leave work early, if she desired, after she finished her work. Because of the ongoing right shoulder symptoms, Ms. Van Gorden regularly worked only 5 to 6 hours per day. She testified that in the laundry job she regularly worked between 30 and 36 hours per week. Although Ms. Van Gorden regularly worked Monday through Friday, she also worked some Saturdays but she does not know how often.

4. On January 14, 1995, Ms. Van Gorden lifted up on a heavy laundry cart and experienced a pop and sharp pain in the right shoulder. She immediately reported the incident to IBP's medical dispensary and was scheduled to see the company doctor. When the company doctor visited the plant within days of the incident, the doctor recommended that Ms. Van Gorden see another physician and have X-rays. The company then approved Ms. Van Gorden seeing Dr. James Glenn.

5. In early February 1995, Ms. Van Gorden consulted with Dr. Glenn who recommended immediate right shoulder surgery. When IBP refused to authorize the operation, the surgery was postponed. Despite it not being authorized by IBP, Ms. Van Gorden went ahead with surgery on May 26, 1995, with Dr. Glenn performing a distal clavicle resection, anterior acromioplasty, and coracoacromial debridement of the rotator cuff and biceps tear. Because of the delay in having surgery, the muscle had retracted and, therefore, could not be reattached to the tendon. Thus, the surgery was not

successful and Ms. Van Gorden, who is right hand dominant, was left with a complete tear in the rotator cuff and inability to lift her right arm.

6. After surgery, Ms. Van Gorden returned to work at IBP on June 13, 1995. Although she was restricted to one-handed work only, she was given the task of turning gloves right side out which required the use of both hands. Ms. Van Gorden and a co-worker turned approximately 2,400 gloves each day. As she continued to work, Ms. Van Gorden experienced progressively worsening symptoms in her upper back, neck, and shoulders.

7. Despite the ongoing symptoms, Ms. Van Gorden worked through October 24, 1995, when she reported to IBP that she could no longer do her job. Since leaving IBP, Ms. Van Gorden has not looked for work. At age 60, she began receiving Social Security disability benefits.

8. IBP hired Vito J. Carabetta, M.D., who is board certified in physical medicine and rehabilitation, to examine and evaluate Ms. Van Gorden. The doctor saw Ms. Van Gorden in May 1998. At that time, Ms. Van Gorden complained of pain in both shoulders and neck. The doctor diagnosed arthritis in both the left shoulder and neck, and a full and complete tear of the right rotator cuff, all of which combined for a 23 percent whole body functional impairment. The doctor testified that Ms. Van Gorden's history was consistent with cumulative trauma or repetitive type injury over a period of several years involving both shoulders and the neck.

9. Although Dr. Carabetta rated Ms. Van Gorden according to the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment (Guides), he also testified that he believed the rating would be similar, or at least within 5 percent, under the third edition.

10. According to Dr. Carabetta, Ms. Van Gorden should not lift greater than 15 pounds and should not push a 45-pound cart. Further, the doctor believes she will experience problems and work limitations because of her inability to reach.

11. Ms. Van Gorden's attorney hired Daniel D. Zimmerman, M.D., to examine Ms. Van Gorden. Dr. Zimmerman diagnosed (1) both a rotator cuff and biceps tendon tear in the right upper extremity, (2) entrapment syndrome of the greater occipital and greater auricular nerves associated with an inflammatory response to the paraspinous muscles at the cervical level, (3) narrowing between the fifth and sixth cervical vertebrae and extensive osteoarthritic changes at that level, (4) impingement syndrome in the left shoulder, and (5) a frozen right shoulder.

12. Dr. Zimmerman found Ms. Van Gorden had a 12 percent impairment to the body due to the cervical spine, a 31 percent impairment to the body due to the right shoulder, and a 12 percent impairment to the body due to the left shoulder, all of which combine for a 46 percent functional impairment to the body as a whole. The doctor testified that over

the years Ms. Van Gorden had sustained repetitive trauma injuries to her shoulders and neck.

13. According to Dr. Zimmerman, Ms. Van Gorden should not lift over 5 pounds on an occasional basis and limit frequent lifting to less than 5 pounds. Also, the doctor believes she should avoid work at shoulder height or above with either arm and avoid frequent flexion, extension, twisting, torquing, and hammering. And finally, she should avoid hyperflexion and hyperextension of the cervical spine or holding the cervical spine in a captive position for extended periods.

14. The Judge appointed Zita J. Surprenant, M.D., to evaluate Ms. Van Gorden. By letter dated July 16, 1998, Dr. Surprenant reported that Ms. Van Gorden tore both her right rotator cuff and biceps tendon as a direct result of the January 14, 1995 accident. In addition, Dr. Surprenant diagnosed adhesive capsulitis in the right shoulder and permanent aggravations of the left shoulder osteoarthritis and of the cervical degenerative disk disease.

15. Using the third edition of the Guides, Dr. Surprenant found that Ms. Van Gorden had a 36 percent whole body functional impairment, all of which the doctor attributed to the January 1995 accident and resulting injuries to both shoulders and neck. The doctor rated the right upper extremity impairment at 50 percent.

16. Dr. Surprenant wrote that Ms. Van Gorden should (1) avoid repetitive frequent activities with the right upper extremity above shoulder height or in a position of forward or lateral reach, (2) limit lifting to shoulder height and to 15 pounds or less on an occasional basis and 5 pounds or less on a frequent basis, (3) avoid sustained awkward postures of her cervical and thoracic spine, and (4) avoid repetitive left upper extremity overhead activity or reaching and pulling.

17. Considering the various medical opinions, the Appeals Board finds that Ms. Van Gorden sustained a 50 percent functional impairment to the right upper extremity and shoulder as a result of the January 1995 accident. That rating is supported by the report of Dr. Surprenant, which the Appeals Board finds persuasive.

18. Considering Dr. Zimmerman's restrictions and the facts that Ms. Van Gorden has performed only unskilled labor over the last 25 years and that she does not have a high school diploma or its equivalent, vocational rehabilitation counselor Dick Santner found that Ms. Van Gorden has very limited employment opportunities and is probably limited to part time work at minimum wage, if any work could be found. Conversely, vocational rehabilitation counselor Karen Crist Terrill testified that she believed that Ms. Van Gorden could probably work as a sales clerk or telemarketer and earn minimum wage, or $206 per week.

19. Ms. Van Gorden was earning $8.67 per hour on both January 14, 1995 and October 24, 1995. At the June 1995 preliminary hearing IBP's attorney conceded that Ms. Van Gorden was paid a bonus averaging $4.18 per week. In addition to paying wages and bonuses, Ms. Van Gorden testified that IBP also provided some fringe benefits such as life insurance, medical insurance, disability insurance, and profit sharing, all of which terminated when she quit. The Appeals Board finds that Ms. Van Gorden has failed to prove IBP's weekly cost for those additional items. The Appeals Board is mindful that Ms. Van Gorden testified and introduced an exhibit showing that she paid $61.63 per month to retain her medical insurance after she quit working for IBP. But the Appeals Board finds that evidence is insufficient to prove the cost that IBP paid for that insurance, which is the test under the Act.[1]

20. During the 26 weeks before the January 14, 1995 accident, Ms. Van Gorden earned a total of $6,717.13 in base wages. The wage statement introduced at the regular hearing omits the wages paid for the weeks ending September 17, 1994, and October 15, 1994. Therefore, the Appeals Board finds that Ms. Van Gorden did not work two of those 26 weeks. Dividing $6,717.13 by 24 weeks yields an average weekly base wage of $279.88. Adding that number to the weekly bonus of $4.18 produces an average weekly wage of $284.06 for the January 14, 1995 accident.

21. During the 26 weeks before October 24, 1995, Ms. Van Gorden earned a total of $4,716.49. The wage statement for that period omits wages for five weeks of that period. Dividing $4,716.49 by 21 weeks yields an average weekly base wage of $224.59. Adding the weekly bonus to that number produces an average weekly wage of $228.77 for the series of accidents and repetitive injury ending October 24, 1995.

22. As a result of her injuries, Ms. Van Gorden's right shoulder has atrophied and, therefore, she has difficulty keeping her brassiere strap from sliding off. Dr. Surprenant instructed Ms. Van Gorden to go to a leading department store to be evaluated for a custom brassiere. The doctor believes the necessity of the custom undergarment is directly related to the right shoulder injury.

23. The Appeals Board adopts the Judge's findings as set forth in the Award and Award Nunc Pro Tunc to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

1. The Appeals Board finds and concludes that there are two dates of accident in this proceeding. The date of accident in Docket #199,461 is January 14, 1995, when Ms. Van Gorden injured her right shoulder while lifting up on and maneuvering a laundry cart.

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[1] K.S.A. 44-511(a)(2).

2. As the Kansas Supreme Court held in a recent decision,[2] the appropriate date of accident for repetitive injury cases is the last date that a worker engages in the offending activity. Ms. Van Gorden sustained repetitive mini-traumas and repetitive use injury to both her shoulders and neck through her last day of employment with IBP. That conclusion is supported by the testimony of both Dr. Carabetta and Dr. Zimmerman. Therefore, in Docket #199,462 the date of accident for that series of accidents and the resulting injury is Ms. Van Gorden's last day of work on October 24, 1995.

3. The Appeals Board agrees with the Judge that Ms. Van Gorden's average weekly wage should be computed as if she were a part-time employee. As indicated in the findings above, once she transferred to the laundry in the late 1980s, Ms. Van Gorden regularly worked only 30 to 36 hours per week. Because of her ongoing shoulder symptoms, Ms. Van Gorden would regularly complete her work in 5 to 6 hours and leave work early.

4. A part-time worker is one who by custom and practice agrees, or is expected, to regularly work less than 40 hours per week.

> (4) The term "part-time hourly employee" shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.[3]

The Appeals Board concludes that Ms. Van Gorden's job met this definition.

5. As indicated in the findings above, IBP conceded that Ms. Van Gorden earned $4.18 per week in bonuses. Therefore, that amount should be added to Ms. Van Gorden's average weekly base wage. Adding that amount to the average base wages of $279.88 and $224.59 yields an average weekly wage of $284.06 for the January 1995 accident and $228.77 for the October 1995 accident.

6. Ms. Van Gorden has a 50 percent functional impairment to her right arm and shoulder as a result of the January 14, 1995 accident. Therefore, in Docket #199,461 she should receive benefits for that scheduled injury.

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[2] See Treaster v. Dillon Companies, Inc., Docket No. 80,830 (Kan. 1999).

[3] K.S.A. 44-511(a)(4).

7. The Workers Compensation Act provides that a worker is entitled to a maximum of 225 weeks of permanent partial disability benefits for a shoulder injury.[4] As provided by regulation,[5] the number of weeks of temporary total disability benefits (10.57) is subtracted from 225 and the resulting number is then multiplied by the functional impairment rating (50 percent). That computation yields 107.22 weeks of permanent partial disability compensation that Ms. Van Gorden should receive for the January 14, 1995 accident in Docket #199,461.

8. In Docket #199,462, the Appeals Board concludes that Ms. Van Gorden is essentially unemployable when considering the nature of her injuries, her permanent work restrictions and limitations, her work history as an unskilled laborer, her age, her limited education, and her labor market. Therefore, the Appeals Board concludes that she is entitled to receive a permanent total disability for the work-related injuries that she sustained through October 24, 1995.

9. The Workers Compensation Act provides that awards shall be reduced by the amount of preexisting impairment.

> The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.[6]

10. In Docket #199,461, there should be no reduction for preexisting impairment because the only impairment that existed before that date was from the ongoing repetitive injury that Ms. Van Gorden was experiencing as a result of her repetitive work activities.

11. In Docket #199,462, there should be a reduction for preexisting functional impairment for the 50 percent functional impairment caused by the January 1995 accident. The January 1995 right shoulder injury contributed to the ongoing repetitive use injury that Ms. Van Gorden experienced through her last day of work. Further, the restrictions and limitations placed upon Ms. Van Gorden as a result of the January 1995 right shoulder injury play a significant role in preventing her from working. Therefore, under these facts, and to avoid the duplication of benefits, the permanent total award should be reduced by the 50 percent functional impairment to the right upper extremity that preexisted October 24, 1995.

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[4] K.S.A. 44-510d(a)(13).

[5] K.A.R. 51-7-8.

[6] K.S.A. 44-501(c).

12. Because we are dealing with a permanent total disability, it is not possible to reduce the award by simply subtracting the percentage of preexisting functional impairment, which is the method used if the award is based upon a permanent partial disability rating. An alternative method is to deduct the number of weeks represented by the preexisting impairment from the total number of weeks that are payable for the permanent total disability. Because of the January 1995 accident, Ms. Van Gorden had a 50 percent functional impairment to the right upper extremity, which included the shoulder. That functional impairment represents 112.5 weeks of benefits, which is derived by multiplying 50 percent by 225 weeks (the maximum number of weeks payable for a shoulder injury pursuant to the scheduled injury statute[7]). Therefore, the award for permanent total disability should be reduced 112.5 weeks from 819.56[8] to 707.06 weeks.

13. The Workers Compensation Act provides that employers are required to provide an injured worker with the medical treatment and apparatus that is reasonably necessary to cure and relieve the worker from the effects of the injury.

> (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.[9]

By regulation, "apparatus" is defined as such appliances as glasses, teeth, or an artificial member.[10]

14. Considering the applicable statute and regulation, the Appeals Board is unable to conclude, under these facts, that the recommended custom-made brassiere should be considered medical treatment or a medical apparatus.

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[7] K.S.A. 44-510d(a)(13).

[8] Pursuant to K.S.A. 44-510c(a)(1), the benefits for a permanent total disability continues for the duration of such disability, subject to review and modification. Therefore, a permanent total disability award is not limited to 415 weeks as is an award for permanent partial general disability. Dividing the maximum amount of a permanent total disability award, or $125,000, by the compensation rate, or $152.52, yields 819.56 weeks of benefits.

[9] K.S.A. 44-510(a).

[10] K.A.R. 51-9-2.

15. IBP argued that Dr. Surprenant's July 16, 1998 letter and medical report should not be considered as part of the evidentiary record because the doctor did not testify. The Appeals Board disagrees.

16. By order dated May 7, 1998, Judge Avery ordered an independent medical examination and evaluation under K.S.A. 44-510e and K.S.A. 44-516. The Judge appointed Dr. Surprenant to provide that examination. The doctor saw Ms. Van Gorden on July 16, 1998, and reported back to the Judge on the same date.

17. The Workers Compensation Act requires an administrative law judge to appoint an independent health care provider to issue an opinion regarding a worker's functional impairment when the worker and the employer cannot agree upon the appropriate rating.[11] The Act also provides that the judge must consider that rating when deciding the case. Also, the recent McKinney[12] case held that the independent medical examiner's report becomes a part of the evidentiary record without supporting testimony.

The Act also provides that the judges may appoint neutral physicians. The Act provides:

> In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct.[13]

By administrative regulation, the reports prepared by the neutral physicians become part of the evidentiary record.

> If a neutral physician is appointed, the written report of that neutral physician shall be made a part of the record of hearing. Either party may cross examine each neutral physician so employed. The fee of the neutral physician giving such testimony shall be assessed as costs to a party at the administrative law judge's discretion.[14]

Another statute of importance is K.S.A. 44-519, which purports to prohibit considering a medical report unless the report is supported by the health care provider's

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[11] K.S.A. 1994 Supp. 44-510e.

[12] McKinney v. General Motors Corp., 22 Kan. App. 2d 768, 921 P.2d 257 (1996).

[13] K.S.A. 44-516.

[14] K.A.R. 51-9-6.

testimony. That statute also states that the medical report shall not be considered as competent evidence in any case where the testimony of such health care provider is not admissible.

There is little distinction between a report generated under K.S.A. 44-510e as opposed to K.S.A. 44-516. In both situations the reports are requested by the administrative law judge to assist in deciding a contested claim. It would be unreasonable and somewhat absurd to construe the Act to permit judges to obtain independent medical examinations from neutral physicians but then restrict the judges from considering those doctors' reports.

In Foulk,[15] the Court of Appeals held that the Workers Compensation Act should be interpreted to avoid unreasonable and absurd results. In that case the Court said:

> Legislative intent should be determined from a general consideration of the entire act. Todd v. Kelly, 251 Kan. 512, 516, 837 P.2d 381 (1992). In addition, this court must presume the legislature intends for the courts to give an act a reasonable interpretation to avoid unreasonable or absurd results. 251 Kan. at 520.

Therefore, the Appeals Board concludes that when a judge appoints a neutral physician to evaluate an injured worker that doctor's report becomes a part of the evidentiary record for all purposes. The Appeals Board limits the application of K.S.A. 44-519 to those records and reports that were not generated by a neutral physician at a judge's request.

AWARD

WHEREFORE, the Appeals Board modifies the December 17, 1998 Award, and the December 18, 1998 Award Nunc Pro Tunc, as follows:

Docket #199,461

Shirley Van Gorden is granted compensation from IBP, Inc., for a January 14, 1995 accident and resulting 50 percent permanent partial disability to the right upper extremity. Based upon an average weekly wage of $284.06, Ms. Van Gorden is entitled to receive 10.57 weeks of temporary total disability benefits at $189.38 per week, or $2,001.75, followed by 107.22 weeks of permanent partial disability benefits at $189.38 per week, or $20,305.32, making a total award of $22,307.07, which is all due and owing less any amounts previously paid.

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[15] Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

Docket #199,462

Shirley Van Gorden is granted compensation from IBP, Inc., for a series of accidents ending on October 24, 1995, which resulted in a permanent total disability. Based upon an average weekly wage of $228.77, commencing October 25, 1995, Ms. Van Gorden is entitled to receive $152.52 per week for 707.06 weeks until the total sum of $107,840.79 is paid or until further order of the Director.

As of September 24, 1999, there would be due and owing to the claimant 204.43 weeks of permanent total compensation at $152.52 per week in the sum of $31,179.66, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of $76,661.13 shall be paid at $152.52 per week until further order of the Director.

The Appeals Board adopts the remaining orders set forth in the Award and Award Nunc Pro Tunc to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

CONCURRING AND DISSENTING OPINION

I would affirm the Judge's decision that Ms. Van Gorden injured her right shoulder on January 14, 1995, and that the aggravations and injuries to both shoulders and neck after that date were the direct and natural result of the January accident. That conclusion is supported by the opinions of Dr. Surprenant, the neutral physician selected by the Judge.

I respectfully disagree with the majority's finding that Ms. Van Gorden failed to prove the value of her medical insurance benefit. Once she established her current cost, the

burden of going forward with the evidence shifted to IBP to establish either $61.63 per month was unreasonable or the actual cost that it paid.

I agree with the remainder of the majority's findings.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS
Jennifer L. Hoelker, Dakota City, NE
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director